

Exhibit C

Lance Rogers

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HESTAL LIPSCOMB,)
Plaintiff,)
v.) Civil Action No.
ELECTRONIC DATA SYSTEMS) 05-477 SLR
CORPORATION, a Delaware)
Corporation,)
Defendant.)

Deposition of LANCE ROGERS taken pursuant to notice at the offices of Smith, Katzenstein & Furlow LLP, 800 Delaware Avenue, 7th Floor, Wilmington, Delaware, beginning at 3:05 p.m. on Wednesday, April 12, 2006, before Robert Wayne Wilcox, Jr., Court Reporter and Notary Public.

APPEARANCES:

LAURENCE V. CRONIN, ESQ.
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for the Plaintiff,

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Lance Rogers

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1 A. In July of 2002? Approximately 80 to 85.

2 Q. Okay. Was there a single individual who was
3 in charge of the entire facility?

4 A. In July of 2002 --

5 Q. Yes.

6 A. -- that was Robin Connor.

7 Q. What was her position?

8 A. She was the client delivery executive.

9 Q. Okay. Who were your direct reports in July of
10 2002?

11 A. Jose Tieso, Karen Jennings, who was at the
12 time Karen Kilby, Sandra Foulk, Bridget Wilson, Jamie
13 Laporte, Iris Borders and Michael Moore.

14 How many am I up to?

15 Q. Seven.

16 A. I would have to check the records on the rest
17 of the names. I don't recall each of them.

18 Q. Okay. That was in July 2002?

19 A. Correct.

20 Q. Okay. What about July of 2004? Who were your
21 direct reports?

22 A. It would be Kay Wasno, Barbara Jackson, Jose
23 Tieso, Gina Perez. There's one more. I cannot remember
24 their name.

Lance Rogers

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1 Q. Okay. Now, in July of 2004, in what
2 situations were you involved in personnel matters
3 involving the people who ultimately reported to you?

4 A. Personnel matters related to Hestal Lipscomb
5 and Barbara Jackson. I was involved in a personnel
6 matter related to Roberta McWilliams with Kay Wasno. And
7 potentially -- I don't recall the rest.

8 Q. Okay. They were both in July of 2004.
9 Correct?

10 A. They were over periods of time leading up to
11 July of '04, yes.

12 Q. Okay. Did you make the decision to terminate
13 any employees other than Roberta McWilliams and Hestal
14 Lipscomb?

15 A. Not that I recall during that time frame.

16 Q. All right. What time frame are you using
17 here?

18 A. July of '04.

19 Q. What about during the entire time that you
20 held that particular position?

21 A. Throughout my various leadership positions
22 with EDS, I have separated probably anywhere from five to
23 ten different people or have been involved in those
24 personnel matters.

Lance Rogers

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1 decision that you were going to terminate her on
2 July 9th, 2004. Correct?

3 A. Correct.

4 Q. All right. You informed Ms. Lipscomb that she
5 was being terminated four days later. Correct?

6 A. Correct.

7 Q. How long had Ms. McWilliams worked for you?

8 A. Fourteen, fifteen years.

9 Q. She had cancer. Didn't she?

10 A. I'm not aware.

11 Q. Do you know how old she was?

12 A. I do not.

13 Q. Okay. Do you remember ever discussing her age
14 in any of your discussions regarding her employment while
15 at the same time you were having ongoing discussions
16 about Ms. Lipscomb?

17 A. No.

18 MR. CRONIN: Okay. All right. I have
19 no further questions.

20 MR. PIATAK: Okay. I just have one or
21 two.

22 BY MR. PIATAK:

23 Q. Lance, if you could turn back to the e-mail on
24 July 13th.

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1 A. Okay.

2 Q. If you could read the sentence beginning in
3 the second paragraph "Barb confirmed..." Could you read
4 that out loud, please?

5 A. "Barb confirmed with Hestal that Barb had
6 requested that Hestal follow up and get the documentation
7 on three different occasions."

8 Q. Read the next sentence.

9 A. "Hestal confirmed that for three days in a row
10 Barb had requested and provided advice on how to get the
11 documentation turned in and that she had been
12 unsuccessful in securing the information."

13 Q. Is that consistent with your recollection of
14 what Hestal told you?

15 A. That is correct.

16 MR. PIATAK: Nothing further.

17 MR. CRONIN: I have nothing further.
18 We don't waive.

19 (The deposition concluded at 4:15 p.m.
20 this same day.)

21 - - - - -

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Exhibit D

Barbara Jackson

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HESTAL LIPSCOMB,)
Plaintiff,)
v.) Civil Action No.
ELECTRONIC DATA SYSTEMS) 05-477 SLR
CORPORATION, a Delaware)
Corporation,)
Defendant.)

Deposition of BARBARA JACKSON taken pursuant to notice at the offices of Smith, Katzenstein & Furlow LLP, 800 Delaware Avenue, 7th Floor, Wilmington, Delaware, beginning at 9:20 a.m. on Wednesday, April 12, 2006, before Robert Wayne Wilcox, Jr., Court Reporter and Notary Public.

APPEARANCES:

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Barbara Jackson

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1 BY MR. CRONIN:

2 Q. Did you understand the question?

3 A. No.

4 Q. Okay. Let's break it down and make it easier
5 for you. In reviewing the transcript, did it appear that
6 there were any errors in transcription made by the person
7 who typed the transcript?

8 MR. PIATAK: Objection. You may answer.

9 A. I need to review them again.

10 Q. Please do.

11 As I said, your testimony appears to be
12 contained on pages 7 through 23, but if you would like to
13 take the time and read the whole transcript, please be my
14 guest.

15 A. (The witness complied with counsel's request.)

16 Q. Okay. Ms. Jackson, you had an opportunity to
17 read through the transcript?

18 A. Yes.

19 Q. At least the portion of the transcript
20 relating to your testimony.

21 A. Yes.

22 Q. Now, is there any portion of your testimony
23 that you think is either incorrect or incomplete?

24 MR. PIATAK: Objection. You may answer.

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Barbara Jackson

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1 BY MR. CRONIN:

2 Q. Do you understand the question?

3 A. Yes.

4 MR. PIATAK: Objection. Go ahead. You
5 may answer.

6 BY MR. CRONIN:

7 Q. Go ahead.

8 A. On page 9.

9 Q. Yes.

10 A. On page 9 in the first response where it says
11 I terminated her position.

12 Q. Yes.

13 A. That should say we terminated her position.

14 Q. Okay. By "we," who would you be referring to?

15 A. That would be myself in discussion with my
16 account manager, Lance Rogers.

17 Q. Okay. Anything else?

18 A. On page 19 --

19 Q. Okay.

20 A. -- in the first response where it says I had a
21 conversation with our human relations department. That
22 would be with our human resources.

23 (Ms. Lipscomb entered the conference
24 room.)

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Barbara Jackson

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1 Q. What did you do for them?

2 A. I was their marketing manager.

3 Q. What positions have you had with EDS?

4 A. Supervisor, claims supervisor, claims manager
5 and deputy account manager.

6 Q. Okay. You started as a claims supervisor?

7 A. Yes.

8 Q. That would have been what? Around 2000?

9 A. Yes.

10 Q. What did that job entail? What did you do?

11 A. I managed a group of people that were
12 responsible for claim adjudication, as well as the mail.

13 Q. How many people did you manage in that
14 position?

15 A. Approximately 12.

16 Q. Okay. Then you got a promotion to claims
17 manager?

18 A. Yes.

19 Q. When did that occur?

20 A. In June of 2003.

21 Q. Okay. How did your position change?

22 A. My responsibilities broadened, and I had other
23 teams that reported to me as well.

24 Q. So how many people did you supervise as claims

Barbara Jackson

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1 manager?

2 A. Approximately 30.

3 Q. Okay. Then you got a promotion to deputy
4 account manager?

5 A. Yes.

6 Q. When was that?

7 A. I'm going to say June or July of '05.

8 Q. Okay. So it would have been after
9 Ms. Lipscomb was terminated?

10 A. Yes.

11 Q. Okay. So you were claims manager at the time
12 she was terminated. Is that correct?

13 A. Yes.

14 Q. All right. You said you supervised about 30
15 people?

16 A. Yes.

17 Q. All right. Who were your direct reports?

18 A. I had two supervisors.

19 Q. Who were they?

20 A. Tracey Eaddy, Kristen Goulet.

21 Q. Okay. They were your only direct reports?

22 A. Well, then there were another line of team
23 leaders.

24 Q. How many were there?

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Barbara Jackson

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1 A. Four.

2 Q. Who were they?

3 A. Linda Jackson, Judy Ackerman, Liz Counselor,
4 and Denise Ouly.

5 Q. Okay. So Linda Jackson was also one of your
6 direct reports?

7 A. Yes.

8 Q. Now, did you have any contact with Hestal
9 Lipscomb while she was employed there?

10 A. Yes.

11 Q. Okay. Was it daily? Once a week? Once a
12 month?

13 A. I don't think it was on any regular basis.

14 Q. Okay. What would be the context in which you
15 would have contact with Ms. Lipscomb?

16 A. Seeing her deliver the mail on occasion,
17 having an occasion to go into the mailroom myself to
18 either take a look at some reports, deliver something to
19 be going out.

20 Q. Okay. Now, during the period she was employed
21 there, was she considered a salary or hourly employee?

22 A. Salary.

23 Q. Okay. It was that way the entire time she was
24 there. Correct?

Barbara Jackson

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1 A. Yes.

2 Q. Okay. Now, I'd like you to take a look at
3 where it says Sick Time. Do you see the Sick Time entry?

4 A. Which document are we looking at?

5 Q. We're looking at EDS II 0027.

6 A. Yes.

7 Q. All right. Now, it lists, as I read it, eight
8 days.

9 A. Yes.

10 Q. Okay. Were those the only eight days she was
11 out for sickness during 2003?

12 A. Yes. It would that appear that would be
13 correct.

14 Q. Okay. So the practice is to list in these
15 three categories the actual days that they're missing for
16 work, for vacation and sick. And the days that they're
17 late, those get listed there?

18 A. Yes.

19 Q. What's the purpose of the miscellaneous entry.
20 I assume MISC means miscellaneous. Is that a fair
21 assumption?

22 A. Yes. These would be other -- would be either
23 requests to leave early or reported for work late. Any
24 kind of conversation that the supervisor or the team

Barbara Jackson

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1 myself at the time of the annual review.

2 Q. Okay. So do you recall the annual review for
3 2003 with Ms. Lipscomb?

4 A. I know that there was a review, yes.

5 Q. Do you recall what occurred during that
6 review?

7 A. Not specifics, no.

8 Q. Do you know when it took place?

9 A. I do not.

10 Q. Okay. Who was involved in the decision to
11 terminate Ms. Lipscomb?

12 A. It would be myself, the account manager, Lance
13 Rogers, our human resource folks.

14 Q. Who are those folks?

15 A. Christine Cornwell would be our
16 representative.

17 Q. Anybody else from HR?

18 A. Yes. I believe it was a Donna Yeardsley. And
19 she's from employee relations.

20 Q. Okay. How is that different from HR?

21 A. I really don't know that I can give you a
22 distinct difference between the two.

23 Q. HR and ER?

24 A. (The witness indicated.)

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1 Q. Okay. What discussions with Tracey Eaddy are
2 you talking about?

3 A. Discussions specifically around the attendance
4 record for 2004.

5 Q. Okay. How many times did you talk about that?

6 A. I don't know specifically.

7 Q. When did you have those discussions?

8 A. I don't know specific dates.

9 Q. What was the substance of those discussions?

10 A. Review of the 2004 attendance record.

11 Q. What conclusion did you draw from those
12 discussions?

13 A. That Ms. Lipscomb was not being very
14 cooperative.

15 Q. In what way not being cooperative?

16 A. She was -- had -- did not provide
17 documentation that was requested of her. I requested
18 that documentation myself.

19 Q. Okay. So you're talking about the leave she
20 actually took in 2004?

21 A. Yes.

22 Q. She was not being cooperative because you
23 requested documentation from her that she wouldn't give
24 you?

Barbara Jackson

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1 A. Yes.

2 Q. Okay. What documentation did you request from
3 her?

4 A. I requested that she contact our provider,
5 CIGNA, and supply them with the documentation with
6 regards to her unexcused leave of absence.

7 Q. Okay. So you wanted her to send documents to
8 CIGNA?

9 A. That is correct.

10 Q. Okay. You didn't ask her to give documents to
11 you. Correct?

12 A. I did not.

13 Q. All right. You felt she was uncooperative
14 because she didn't provide documents to CIGNA?

15 A. Yes.

16 Q. When did you reach the conclusion that she was
17 not being cooperative because she didn't provide
18 documents to CIGNA?

19 A. At the conclusion of requesting them on three
20 different occasions and then a follow-up with CIGNA to
21 ultimately find out that she still had not provided them.

22 Q. Okay. So the three conversations you're
23 talking about is the last day of June and the first two
24 days of July. Correct?

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1 A. Yes.

2 Q. All right. So you had no prior conversations
3 with her before that when you believed that she was being
4 uncooperative. Is that correct?

5 A. I don't understand the question.

6 Q. Well, you said through the conversations with
7 Tracey Eaddy that it became clear to you that
8 Ms. Lipscomb was not being cooperative in terms of
9 getting the documentation to CIGNA. Correct?

10 A. Yes.

11 Q. And that factored in your decision to
12 terminate her.

13 A. Yes.

14 Q. Is that correct?

15 A. That is correct.

16 Q. All right. I'm trying to get a sense as to
17 when you reached the conclusion that she was not being
18 cooperative. You mentioned there were three
19 conversations with her on June 30th, July 1 and July 2.
20 Correct?

21 A. Yes.

22 Q. Okay. Was there any indication that she was
23 not being cooperative prior to June 30th, 2004?

24 A. I'm not clear on the definition of not being

Barbara Jackson

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1 A. I don't remember the exact date.

2 Q. Did you ever discuss Ms. Lipscomb's situation
3 with Mr. Rogers other than this time when you presented
4 your recommendation?

5 A. Yes.

6 Q. How many times?

7 A. I believe twice.

8 Q. When were they?

9 A. I don't know exact dates.

10 Q. Okay. So you recall having three
11 conversations with Mr. Rogers about Ms. Lipscomb. Is
12 that correct?

13 A. Yes.

14 Q. All right. Would it be fair to say that the
15 last one was around July 12th or July 13th, 2004?

16 A. I don't know that.

17 Q. Was it close in time to the date of her
18 termination?

19 A. Yes.

20 Q. All right. Now, the two earlier ones, were
21 they within days or weeks of that conversation?

22 A. I would say within days.

23 Q. All right. Tell me what you can about the
24 three conversations that you had with Mr. Rogers starting

Barbara Jackson

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1 with the first one.

2 A. Well, I'm just notifying Mr. Rogers that in
3 fact we had a situation where we had someone out for 14
4 days. The vendor had indicated that the paperwork had
5 not been provided and that the FMLA and short-term
6 disability had been denied.

7 Q. Okay. So you're just putting him on notice of
8 the issue?

9 A. Yes.

10 Q. Did you identify Ms. Lipscomb?

11 A. Yes.

12 Q. All right. What did Mr. Rogers say in
13 response?

14 A. To keep him apprised as to whether or not
15 CIGNA had received the documentation.

16 Q. Okay. Now, when you say the "vendor," you're
17 referring to CIGNA. Correct?

18 A. That is correct.

19 Q. All right. Now tell me about the second
20 conversation.

21 A. The second conversation was to let him know
22 that now the appeal process had expired.

23 Q. What appeal process are you talking about?

24 A. When the claim is denied and Ms. Lipscomb

Barbara Jackson

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1 received a letter from CIGNA advising her that her claim
2 or her request for FMLA or short-term disability had been
3 denied for lack of providing the necessary medical
4 documentation. And in that letter -- I believe that it
5 indicates in the letter that they have 15 days to appeal.

6 Q. Okay. All right. Now, between the first time
7 that you spoke with Mr. Rogers and put him on notice that
8 CIGNA had not received documentation and the second
9 conversation when you advised him that the appeal period
10 had run, did you do anything to talk to Ms. Lipscomb?

11 A. I spoke to Hestal on June the 30th, July the
12 1st and July the 2nd.

13 Q. Okay. But those dates were all at the end of
14 the appeal period. Correct?

15 A. Yes, they were.

16 Q. All right. So this first conversation would
17 have been before that. Correct?

18 A. Yes.

19 Q. All right. So did you, between the time that
20 you spoke with Mr. Rogers, put him on notice of what was
21 going on with respect to Ms. Lipscomb's failure to
22 provide the records? Did you do anything before the
23 appeal period had end to contact Ms. Lipscomb?

24 A. No.

Barbara Jackson

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1 Ms. Lipscomb's termination?

2 A. No.

3 Q. All right. You mentioned a fourth person was
4 involved that you had communications with leading up to
5 Ms. Lipscomb's termination -- Ms. Yeardsley in ER. When
6 did you first have contact with her?

7 A. Around the same time frame that I would have
8 spoken to Christine.

9 Q. Okay. What did you do? Did she call you?
10 Did you call her? How did you make contact?

11 A. I called her.

12 Q. Okay. Why did you call her?

13 A. To let her know that we had received
14 notification from the vendor that the documentation had
15 not been provided.

16 Q. Okay. Would this have been after the appeal
17 had expired?

18 A. Yes.

19 Q. Okay. So it would have been after the three
20 meetings with Ms. Lipscomb?

21 A. Yes.

22 Q. Why did you contact her?

23 A. I wanted to validate that we were -- that
24 there was -- that the vendor absolutely did not get it,

Barbara Jackson

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1 would have been made would have been by the EDS vendor,
2 CIGNA, to Ms. Lipscomb's medical providers?

3 A. Yes.

4 Q. Did CIGNA have a role with respect to the
5 decision to terminate Ms. Lipscomb's employment?

6 A. No.

7 Q. What was CIGNA's role with respect to
8 Ms. Lipscomb's leave in April and May of 2004?

9 A. Through the vendor that EDS contracts with to
10 handle a request for short-term disability and FMLA.

11 Q. When did they start in that role?

12 A. I don't know.

13 Q. Who was their predecessor?

14 A. I believe it was a company called Synchrony.

15 Q. Okay. That's part of MetLife? Travelers?

16 A. I don't know that.

17 Q. Okay. Do you provide documents to your
18 employees with respect to their benefits?

19 A. Yes.

20 Q. Do you provide -- and I mean you personally --
21 provide to your employees information regarding how they
22 go about seeking various types of leave?

23 A. Personally, no.

24 Q. Who does?

Barbara Jackson

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1 Q. Yes.

2 A. When the employee is aware that they need to
3 go out for a procedure or need to utilize FMLA, they
4 usually meet with their team leader first to let them
5 know that they need to have a leave of absence, at which
6 time they then sit with their supervisor who makes a
7 joint call either with them or for them to the vendor at
8 the time to start the paperwork. And that documentation
9 that's provided to the vendor at that point is very high
10 level -- name, Social Security number, employee's job
11 code and the period of time at which the employee
12 believes they're going to be out. At that time the
13 vendor then has all further communication with the
14 employee and with the employee's physician.

15 Q. Okay. So the employees are not given any
16 documents with respect to how the process proceeds with
17 respect to getting FMLA or short-term disability?

18 A. Well, they are given -- they do have access to
19 those documentation. EDS maintains a website called the
20 Info Center. And by virtually just typing in FMLA or
21 short-term in there takes them right to a website that
22 tells them what the procedures are -- to follow that.

23 Q. Okay. Is there any written document anywhere
24 contained at the facility that employees can look at to

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1 have an understanding of the process for applying for STD
2 or FMLA?

3 A. The employee handbook that I have here in
4 front of me also takes them -- guides them to a website
5 at which they can go ahead and pull down the
6 documentation.

7 MR. CRONIN: Okay. Mark this, please.

8 (EDS Deposition Exhibit No. 5 was marked
9 for identification.)

10 BY MR. CRONIN:

11 Q. Ms. Jackson, you've had handed to you what's
12 been marked as EDS No. 5. Do you recognize this
13 document?

14 A. Yes.

15 Q. Okay. What is it?

16 A. It is the 2004 benefits handbook.

17 Q. Okay. Where can an employee at the Newark
18 facility find a copy of this document to review?

19 A. Well, they can find it one or two places.
20 They can either go out on-line to get it or at the time
21 they become an EDS employee -- I believe I received mine
22 in the mail.

23 Q. Okay. But you don't know whether employees
24 get theirs in the mail or not -- other employees? Is

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1 Q. Mm-hmm.

2 A. -- it indicates that if an employee is absent
3 for three or more days consecutively due to a medical
4 reason they may be required to provide a health care
5 provider certification to their manager upon return to
6 the workplace.

7 And then it says: Further, a health
8 care provider certification may be required to validate
9 any other illness or time away from the work due to
10 medical reason if deemed appropriate by EDS leadership.

11 Q. Okay. But you're talking about things that
12 would be submitted to the workplace. Correct?

13 A. Correct.

14 Q. All right. Nothing gets submitted to the
15 vendor for purposes of determining whether it's FMLA
16 leave until somebody has been out at least five days?

17 A. Yes.

18 Q. Okay. How long has this document been in
19 effect, EDS No. 4, this account handbook?

20 A. I don't know.

21 Q. Okay. Do you ever recall discussing with
22 anyone at either EDS or CIGNA the significance of this
23 document in connection with the decision to terminate her
24 employment?

Barbara Jackson

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1 A. No.

2 Q. Okay. Now, we've talked a little bit about
3 this policy that's contained in pages 16 and 17. Was
4 this the policy that was relied upon to terminate
5 Ms. Lipscomb's employment?

6 A. Yes.

7 Q. Okay. What provision in this policy did EDS
8 rely on to terminate her employment?

9 A. Under Absences, again, the paragraph that
10 begins: If any employee is absent for three or more days
11 due to a medical reason, they may be required to provide
12 a health care provider certification to their manager
13 upon return to the workplace. Further, a health care
14 provider certification may be required to validate any
15 other illness or time away from work due to a medical
16 reason if deemed appropriate by EDS/USGS leadership.
17 Excessive absenteeism may result in disciplinary action
18 up to and including separation from EDS.

19 Q. Okay. So in your view she violated the whole
20 provision?

21 A. Yes.

22 Q. Okay. Let's break it down and deal with it
23 sentence by sentence. Is it your view that she did not
24 provide health care provider certification to her manager

Barbara Jackson

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1 A. Sir, can you ask the question again, please?

2 Q. What I asked for was the documentation that
3 reflected the fact that CIGNA, as EDS's vendor, was
4 asking for medical certification from Ms. Lipscomb
5 separate and apart from any application for either
6 short-term disability or FMLA.

7 I mean, if it will help you, why don't
8 you take a look at EDS II 145?

9 A. This is CIGNA's letter asking them for -- to
10 review the packet that they had sent her and asking for
11 documentation.

12 Q. The letter is what it is.

13 I'm just trying to turn you to a letter
14 that came from CIGNA in response to counsel's request in
15 order to save a little bit of time. I'm trying to find
16 some letter as you've described from CIGNA which
17 indicates that they told Ms. Lipscomb to provide medical
18 certification separate and apart from her applications
19 for FMLA leave or short-term disability.

20 A. I don't know of one.

21 Q. Okay.

22 A. I'm not familiar with that.

23 Q. All right. Do you know how employees at the
24 company were advised that CIGNA was also administering

Barbara Jackson

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1 non-FMLA and non-short-term disability leave for the
2 employees?

3 A. I know that when they -- when she would have
4 met with her supervisor -- when someone meets with their
5 supervisor to discuss short-term disability or FMLA
6 leave -- at that time when the call is made, they are
7 told who the vendor is.

8 Q. Right.

9 But I'm asking more specifically when
10 EDS advises its employees that the vendor is not only
11 handling applications for short-term disability and FMLA
12 leave. They're also handling other requests for medical
13 leave which are not covered by either STD or FMLA.

14 A. I don't know.

15 Q. Okay. Let's turn to EDS II 254 and 254-A.

16 A. (The witness complied with counsel's request.)

17 Q. Do you recognize this two-page document?

18 A. I do.

19 Q. What is it?

20 A. These were my notes of the time period leading
21 up to the termination of Ms. Lipscomb.

22 Q. When did you create this document?

23 A. The day of her termination.

24 Q. For what purpose did you create it?

Barbara Jackson

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1 of the appeal period -- the end of June. Correct?

2 A. Yes.

3 Q. All right. You had those three conversations
4 with her at the very end of that period. Correct?

5 A. Correct.

6 Q. Is it fair to say that during those three
7 meetings with her you never told her that she was going
8 to be terminated if she did not provide a medical
9 certification? Correct?

10 A. Correct.

11 Q. Okay. What do you recall of those three
12 conversations?

13 A. I remember the first one. Tracey and I met
14 with Ms. Lipscomb to tell her that -- to ask her did she
15 get the paperwork from CIGNA, that CIGNA had not received
16 the paperwork from the doctor and that these would be
17 considered unexcused absenteeism days and that she needed
18 to have her provider get the documentation to CIGNA.

19 I also asked that she contact the doctor
20 herself to be sure that that happened and also to contact
21 CIGNA so that CIGNA would know that she was working on
22 it. She said that she would.

23 I -- the very next morning when I came
24 in, I went looking for Hestal, and I asked her if she had

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1 made contact with the doctor. And she said she was
2 unable to reach him. I think she said she got as far as
3 the nurse. I suggested to her that she use one of the
4 conference rooms and to pursue that as best she could
5 because the documentation was important to document her
6 14 days of unexcused absence.

7 On 7/2 I followed up with Hestal a third
8 time. She said that the doctor had communicated to her
9 that it had been faxed. I suggested that she contact
10 CIGNA and also that she have the documentation faxed to
11 her so that she herself could intercept it and then fax
12 it off to CIGNA and be assured that in fact her
13 caseworker at CIGNA did have the documentation.

14 Q. Okay. What did she say?

15 A. She said she would do that.

16 Q. Okay. Do you remember anything else of those
17 three conversations?

18 A. I do not.

19 Q. Okay. Ms. Eaddy was present in only the first
20 one?

21 A. I believe she was.

22 Q. Okay. Now, you've mentioned that during the
23 first two meetings you referred to it as unexcused
24 absentee days. Did you explain to Ms. Lipscomb what that

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1 meant?

2 A. No.

3 Q. Okay. Did you explain to her what the
4 consequences were of unexcused absentee days?

5 A. No.

6 Q. Okay. Now, according to EDS II 254-A, you
7 checked with CIGNA the following Monday and they told you
8 that nothing had been received.

9 A. That is correct.

10 Q. Who did you speak with?

11 A. It would have been the person -- whoever
12 signed the letter. Whoever the caseworker was at the
13 time.

14 Q. You don't know who it is?

15 A. I don't remember.

16 Q. Do you have any notes regarding that
17 conversation?

18 A. The letter in here from CIGNA should have the
19 person's name on it.

20 Q. All right. But leaving that aside for the
21 moment, did you memorialize this conversation? Did you
22 write any notes regarding this conversation?

23 A. No other than the two lines that I wrote here.

24 Q. Okay. So tell me about that conversation.

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1 A. I called to say: Did you get any
2 documentation from the physician? Have you heard from
3 the employer herself? Because I had requested Hestal to
4 do that. On at least two of the occasions, I spoke
5 with -- she said she had not heard from the employee and
6 had not heard from the doctor nor had she received any
7 documentation.

8 Q. Okay. Now, did you then go to Ms. Lipscomb
9 and tell her about your conversation with CIGNA?

10 A. I did not.

11 Q. Why not?

12 A. She had not complied with the three times that
13 I had already met with her to ask her and prompt her and
14 beg her to get that documentation in. At that point I
15 felt she was being noncompliant.

16 Q. Right.

17 A. There was no reason to follow up.

18 Q. Because that's what CIGNA was telling you.

19 Correct?

20 A. Excuse me?

21 Q. You were relying on what CIGNA was telling
22 you. Correct?

23 A. That they had not received the documentation.

24 Q. That's correct. Correct?

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1 A. No. I was relying on what CIGNA had told me
2 as well as the fact that I had specifically asked
3 Ms. Lipscomb to have the documentation faxed to her at a
4 secure fax number where she could get it and fax it off
5 to CIGNA herself in assurance that in fact the vendor had
6 it. And she had not done that either.

7 Q. Okay. Did you ask her about that -- why she
8 didn't do that?

9 A. Each time I asked her she said she would do
10 it.

11 Q. Okay. But on the day that you talked to
12 CIGNA, you had received word from them that they didn't
13 receive it. Correct?

14 A. Correct.

15 Q. You formed the belief that Ms. Lipscomb had
16 disobeyed your direction. Is that correct?

17 A. I don't know that I would use the word
18 "disobeyed" my direction.

19 Q. Well, you've just described what you
20 specifically told her to do. To your knowledge, she
21 didn't do it. Correct?

22 A. She did not do it.

23 Q. Right.

24 So why didn't you confront her with

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1 that?

2 A. Because I had already confronted her three
3 days in a row specifically asking her to do something.
4 She had done none of that.

5 Q. But as of the date that you received that
6 confirmation from CIGNA, you don't know what efforts she
7 had made to try and get it to CIGNA.

8 A. I knew by day three she still had done
9 nothing. So I had nothing to lead me to believe that she
10 had done something on day five.

11 Q. But according to what CIGNA was telling you.
12 Correct?

13 A. Well, according to what Ms. Lipscomb had told
14 me on the third day that I met with her that still no
15 contact had been made. I had no reason to believe there
16 was any contact made.

17 Q. Okay. So you gave her a direct order to call
18 CIGNA?

19 A. To call CIGNA herself. That is correct.

20 Q. You felt because she told you she had not
21 called CIGNA that she had disobeyed your order?

22 A. Yes.

23 Q. Okay. Why didn't you terminate her or
24 discipline her for that?

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1 A. I don't have the authority to terminate
2 someone on the spot.

3 Q. Why didn't you --

4 A. Nor would I do that.

5 Q. I don't see anywhere in the paperwork any
6 indication that it was Ms. Lipscomb's failure to follow a
7 direct order of yours that factored into the decision to
8 terminate her. Is it somewhere in the record that I just
9 don't know about?

10 A. It's just reflected in my notes of the up
11 to -- leading to the termination.

12 Q. Okay. So it would just be what's in 254 and
13 254-A?

14 A. To the best of my knowledge, yes.

15 Q. Okay. All right. Let's take a look at EDS II
16 0043 to 51. As of July 5th when you spoke to CIGNA, you
17 had decided that an attendance improvement plan was no
18 longer an option, correct, based on Ms. Lipscomb's lack
19 of cooperation?

20 A. Not as of July 5th, no.

21 Q. When did you decide that she had shown a lack
22 of cooperation?

23 A. I believed that as of July 5th she had shown a
24 lack of cooperation, but no decision had been made at

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1 Q. Did Hestal ever tell you that she had in fact
2 contacted CIGNA herself?

3 A. She did not.

4 Q. If she didn't, would she had been cooperative
5 with your instructions?

6 A. No.

7 Q. These notes also indicated that you told her
8 to use a conference room and an EDS fax so she could have
9 the doctor fax information to her at EDS and so she could
10 intercept the paperwork and fax it to CIGNA herself. Did
11 Ms. Lipscomb tell you that she had done that?

12 A. She did not.

13 Q. If she did not do it, was she cooperative with
14 your instructions?

15 A. She was not.

16 Q. Counsel many times asked you to assume that a
17 document had been sent to CIGNA on June 21st. June 21st
18 is before your three conversations with Ms. Lipscomb, is
19 it not?

20 A. Yes.

21 Q. Okay. If Ms. Lipscomb after June 21st did not
22 fax the information to CIGNA, would she have been
23 cooperative with your instructions?

24 MR. CRONIN: Object to the form. You

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1 can answer.

2 A. I'm sorry. Can you repeat the question?

3 Q. Sure.

4 Counsel asked you several questions
5 to assume that something had been sent to CIGNA on
6 June 21st. June 21st precedes your three conversations
7 with Ms. Lipscomb. Correct?

8 A. Yes.

9 Q. On July 2nd you asked Ms. Lipscomb to contact
10 the doctor herself, have the doctor fax the information
11 to her at EDS so that she could intercept the paperwork
12 and fax it to CIGNA herself. Correct?

13 A. Yes.

14 Q. If she didn't send anything after June 21st
15 despite your instructions on July 1st, would she have
16 been cooperative with your instructions?

17 MR. CRONIN: Object to the form.

18 BY MR. PIATAK:

19 Q. You can answer.

20 A. No.

21 Q. Okay. If you would turn your attention to
22 EDS II 00103.

23 A. (The witness complied with counsel's request.)

24 Q. This is a letter to Ms. Lipscomb from CIGNA.